Supreme Court, U.S.
FILED
JAN 11 1971
E. ROBERT SEAVER, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1506

BOSTON & PROVIDENCE
RAILROAD DEVELOPMENT GROUP,
PETITIONER,

v.

CHARLES W. BARTLETT, TRUSTEE, ET AL.,
RESPONDENTS.

ON PETITION FOR CERTIORARI

PETITION FOR REHEARING

ARMISTEAD B. ROOD
Room 735
63 State Street
Boston, Massachusetts 02109
Attorney for Petitioner

June 11, 1971

Blanchard Press, Inc., Boston, Mass. — Law Printers

PETITION FOR REHEARING

The petition of March 22, 1971 for certiorari herein shows a shocking scheme to force a sale of the Boston & Providence Railroad "as of December 31, 1963" to the former New Haven Railroad enterprise, for a confiscatory net price consisting of 42.5% of 1963 scrap value, through abusive manipulation of the Section 77 judicial process in the United States courts, foreclosing consideration of changed conditions.

On April 2, 1971, trustees of the Penn Central Transportation Company took up an assignment of New Haven's position in the transaction and set out to grab the Boston & Providence for Penn Central. The word "grab" is perhaps misleading, because Penn Central *already has* the free use of the Boston & Providence properties for providing public transportation services, and there is no thought of cutting Penn Central off from that use. What Penn Central gets by buying the B & P is one more speculation in urban real estate – something which the statutory conditions of the highly-publicized Penn Central $100,000,000 loan of 1971 would seem to forbid. (Emergency Rail Services Act of 1970.)

Petitioner believes that the Commission can reopen a plan on its own motion – but the Commission doesn't do that. Hence Congress enacted the specific procedure to compel review for changed conditions under Section 208 of Title 11, U.S.C. Petitioner filed under 208(a)(1) in the exact way that Congress specified. The filing was made in this Court where the plan was pending, before its confirmation had become final. By statute that tolled the confirmation proceeding until the Commission should pass on it. That filing constituted filing in the Commission. Yet on April 8, 1971, the Commission adopted an order taking the position that it is *forbidden* to pass on the Section 208 petition – because the petition was not transmitted to the Commission by the Clerk of the Supreme Court (but, rather, by an attorney).

The Commission takes the view that it is not allowed to consider the question of whether there have been any significant

changes of condition since 1966 – solely for this reason. Of course the Commission did not suggest that there have been no significant changes of condition since 1966.

Petitioner does not now ask the Supreme Court to go into the merits – but only to signify to the Commission that it is lawful for the Commission to consider the pending Section 208 petition. (The petition was timely: the statute requires that it be more than 18 months after the Commission's last certification of its decision on a previous petition under Section 208; the last certification was on September 16, 1968, with the Eighth Supplemental Report of the Commission.)

WHEREFORE, petitioner asks this Court to enter an order signifying that the Commission is not barred from considering the Section 208 petition on account of the method of transmittal of the petition to the Commission.

Respectfully submitted,
Armistead B. Rood
Attorney for petitioner.

CERTIFICATE

I certify that this petition is presented in good faith and not for delay, and that it meets all requirements of Rule 58, paragraph 2. as to grounds and otherwise.

I further certify that I have served respondents herein by mailing copies to the attorneys of record for each respondent, as listed in the joint brief of respondents previously filed, using prepaid first class mail.

Armistead B. Rood

June 11, 1971